



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

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Executive Director

No. 99/44

August 20, 1999

TO COUNTY ASSESSORS,  
COUNTY COUNSELS, ASSESSMENT  
APPEALS BOARDS, AND  
OTHER INTERESTED PARTIES:

**NOTICE OF PROPOSED REGULATORY ACTION  
BY THE  
STATE BOARD OF EQUALIZATION**

**AMEND PROPERTY TAX RULES 302, 305.5, 307, 308, 308.5, 308.6, 310, 311, 312, 316, 322,  
323, 324, 325, AND 326  
REPEAL PROPERTY TAX RULES 318, 319, 320  
LOCAL EQUALIZATION RULES**

**PUBLIC HEARING: WEDNESDAY, OCTOBER 6, 1999 AT 1:30 P.M.**

**NOTICE IS HEREBY GIVEN:**

The State Board of Equalization, pursuant to the authority vested in the Board by section 15606 (c) of the Government Code, proposes to amend Rules 302, 305.5, 307, 308, 308.5, 308.6, 310, 311, 312, 316, 322, 323, 324, 325, and 326 and to delete Rules 318, 319, and 320—Local Equalization Rules, in Title 18, Division 1 of the California Code of Regulations. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, at 1:30 p.m., or as soon thereafter as the matter may be heard, on October 6, 1999. Any person interested may present statements or arguments orally at that time and place. Written statements or arguments will be considered by the Board if received by October 6, 1999.

**INFORMATIVE DIGEST**

Rules 302, 305.5, 307, 308, 308.5, 308.6, 310, 311, 312, 316, 322, 323, 324, 325, and 326 are amended and Rules 318, 319, 320 are deleted to interpret and make specific the Constitutional and statutory authority of the Board to prescribe rules and regulations to govern local boards of equalization and assessment appeals board when equalizing property values.

Rule 302 – The Board’s Function and Jurisdiction. The proposed amendments more precisely describe the functions of appeals boards in the exercise of their jurisdiction.

Rule 305.5 – Base Year Value Presumption. The proposed amendments add correct statutory definitions and make the time period for appeals of base year values consistent with statutory and case law.

Rule 307 - Notice of Hearing. The proposed amendments update the means by which notification may be effected and change the exceptions for the requirement of notice no less than 45 days in advance of hearing.

Rule 308 – Request for Findings. Proposed amendments condition preparation of findings upon the payment of the required fee or deposit and add the statutory requirement for payment of attorney's fees.

Rule 308.5 – Disqualification of a Board Member or Hearing Officer. Proposed amendments specify that disqualification procedures apply to hearing officers and conform rule to statutory requirements.

Rule 308.6 – Application for Equalization by Member, Alternate Member, or Hearing Officer. Proposed amendments specify that disqualification procedures apply to hearing officers.

Rule 310 – Selection of Board Chair. Proposed amendments make references gender neutral.

Rule 311 – Quorum and Vote Required. Proposed amendments clarify that an applicant's demand for a hearing before a full assessment appeals board shall be held before a full three member panel. The amendments further provide that if the applicant demands a full board, that the board may request that the applicant waive the two-year time limitation period of Rev. and Tax. Code sec. 1604 and that failure by an applicant to so waive may be a basis for the board to deny the request.

Rule 312 – Hearings Recorded. Proposed amendments allow for video recording of hearings and designation of court reporter's transcript as official record of proceedings.

Rule 316 – Examination of Applicant by Board. Proposed amendments clarify that applicant may be examined on all issues, including change in ownership and new construction determinations, within a board's jurisdiction and changes slightly the procedures for a board approval of a stipulation.

Rule 318 – Property in Common Ownership. Proposed for deletion because its provisions have been incorporated as amendments to Rule 317. PERSONAL APPEARANCE BY APPLICANT; APPEARANCE BY AGENT.

Rule 319 – Appearance by Corporation. Proposed for deletion because its provisions have been incorporated as amendments to Rule 317. PERSONAL APPEARANCE BY APPLICANT; APPEARANCE BY AGENT.

Rule 320 – Appearance by Members of Family. Proposed for deletion because its provisions have been incorporated as amendments to Rule 317. PERSONAL APPEARANCE BY APPLICANT; APPEARANCE BY AGENT.

Rule 322 – Subpoenas. Proposed amendments specify when requests must be made for board issuance of subpoenas, the scope of subpoena requests and limitations on subpoenas issued near in time to or after commencement of a hearing.

Rule 323 – Postponements and Continuances. Proposed amendments set forth procedures for requesting and granting postponements and continuances.

Rule 324 – Decision. Proposed amendments clarify issues decided by a board in the exercise of its jurisdiction, specify the details that must be included in a decision and briefly describe the considerations upon which the board may base its decision.

Rule 325 – Notice and Clarification of Decision. Proposed amendments define the time upon which a decision becomes final and set forth the requirements for issuance of written notice of decision and the manner of preparing and clarifying findings of fact.

Rule 326 – Reconsideration and Rehearing. Proposed amendments add that a board may reconsider a decision under specific circumstances.

The express terms of the proposed action, written in plain English, are available from the agency contact person named in this notice.

#### **COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS**

The State Board of Equalization has determined that the proposed amendment of Rules 302, 305.5, 307, 308, 308.5, 308.6, 310, 311, 312, 316, 322, 323, 324, 325, and 326 and deletion of Rules 318, 319, and 320 does not impose a mandate on local agencies or school districts. Further, the Board has determined that the new rule will result in no additional direct or indirect costs to any State agency or any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, and that there are no other non-discretionary costs or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

#### **EFFECT ON BUSINESS**

Pursuant to Government Code Section 11346.53(c), the Board of Equalization finds that the amendment of Rules 302, 305.5, 307, 308, 308.5, 308.6, 310, 311, 312, 316, 322, 323, 324, 325, and 326 and deletion of Rules 318, 319, and 320 will not have a significant adverse economic impact on business, because the proposed changes only clarify existing constitutional and statutory interpretations.

The amendment and deletion of these rules will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The amendment and deletion of these rules as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed amendment and deletion of the rules will not affect small business because the new rules only clarify existing constitutional and statutory interpretations.

#### ADVERSE ECONOMIC IMPACT ON PRIVATE PERSONS/BUSINESSES

There will be no adverse economic impact on private businesses or persons because the proposed changes only clarify existing constitutional and statutory interpretations.

#### FEDERAL REGULATIONS

Rules 302, 305.5, 307, 308, 308.5, 308.6, 310, 311, 312, 316, 318, 319, 320, 322, 323, 324, 325, and 326 have no comparable Federal regulations.

#### AUTHORITY

Government Code section 15606, subdivision (c)

#### REFERENCE

California Constitution, article XIII, section 16; Revenue and Taxation Code sections 50, 51, 80, 81, 110.1, 402.1, 402.5, 531.1, 1601, 1603, 1604, 1605.5, 1605.6, 1606, 1607, 1608, 1609, 1609.4, 1609.5, 1610.8, 1611, 1611.5, 1611.6, 1613, 1620, 1622.1, 1622.5, 1622.6, 1624.4, 1641.2.

#### CONTACT

Questions regarding the content of the proposed regulations should be directed to: Mr. Louis Ambrose, Tax Counsel, at P.O. Box 942879, 450 N Street, MIC:82, Sacramento, CA 94279-0082. Telephone: (916) 445-5580; FAX (916) 323-3387.

Written comments for the Board's consideration or requests to present testimony and bring witnesses to the public hearing should be directed to Ms. Mary Ann Stumpf, Regulations Coordinator, (916) 322-9569, and P. O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080.

#### ALTERNATIVES CONSIDERED

The Board must determine that no alternative considered would be more effective in carrying out the purpose for which this action is proposed or be as effective and less burdensome to affected private persons than the proposed action.

#### AVAILABILITY OF STATEMENT OF REASONS AND OF TEXT OF PROPOSED REGULATIONS

The Board has prepared a statement of reasons and strike-out version of the proposed rule. Those documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. Requests for copies should be addressed to Ms. Mary Ann Stumpf, Regulations Coordinator, (916) 322-9569, at P. O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080. The express terms of the proposed regulation (rule) are available on the internet at the Board's website <http://www.boe.ca.gov>.

#### ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed amendments and deletions if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes

modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation or regulations. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Stumpf. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

Dated: August 9, 1999.

STATE BOARD OF EQUALIZATION

/s/ Janice Masterton

Janice Masterton, Chief  
Board Proceedings Division

## **Rule 302. THE BOARD'S FUNCTION AND JURISDICTION.**

The functions of the board are:

(a) To ~~increase after giving notice or to lower, upon application,~~ sustain, or increase upon application, or to increase after giving notice when no application has been filed, individual assessments in order to equalize assessments on the local tax assessment roll,

~~(b) To determine the full value and, where appealed, the base year value of the property that is the subject of the hearing.~~

~~(b)(c)~~ To hear and decide penalty assessments, and to review, equalize, and adjust ~~penal and~~ escaped assessments on that roll except escaped assessments made pursuant to Revenue and Taxation Code section 531.1, ~~and~~

~~(e)(d)~~ To exercise the powers specified in sections 1605.5 and 1613 of the Revenue and Taxation Code, ~~and~~

(e) To determine the correct classification of the property that is the subject of the hearing.

The board acts in a ~~judicial~~ quasi-judicial capacity and ~~may act~~ renders its decision only on the basis of proper evidence presented at the hearing. The board has no jurisdiction to grant or deny exemptions or to consider allegations that claims for exemption from property taxes have been improperly denied.\* The board may, however, determine classifications and allocations of value to property, some of which may be exempt by statute. The board has no legislative power.

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\* The failure of an assessee to request an allocation of claimed exempt and taxable values may result in a denial of judicial relief on the grounds of failure to exhaust administrative remedies.

NOTE – Authority: Government Code Section 15606(c)

Reference: Sections 531.1, 1603, 1604, 1605.5, 1613, Revenue and Taxation Code.

## **Rule 305.5. BASE YEAR VALUE PRESUMPTION.**

(a) The appeals board decision that the ~~fair market~~ full cash value, as defined in section 110 of the Revenue and Taxation Code, is lower than the taxable adjusted base year value (as defined in Section 460(b)(6)) (the base year value adjusted to reflect inflation as prescribed by section 110.1, subdivision (f), of the Revenue and Taxation Code) will not establish a new base year value, unless the base year value is the subject of the appeal.

~~(b) Any base year value determined by a local board of equalization, an assessment appeals board, or by a court for any 1975 assessment shall be conclusively presumed to be the base year value for the property assessed.~~

The full value determined for the 1975 base year shall be conclusively presumed to be the base year value unless an equalization application is filed no later than September 15, 1980.

(c) The full cash value determined for property which that is purchased, is newly constructed, or changes ownership after the 1975 lien date, shall be conclusively presumed to be the base year value, unless an application for equalization is filed;

(1) Within the time period specified in section 1605 of the Revenue and Taxation Code following a determination of new construction or change in ownership;

(2) dDuring the regular equalization period provided for in section 1603 of the Revenue and Taxation Code for the year in which the assessment is placed on the assessment roll, or is filed during the regular equalization period in any of the three succeeding years. Any determination of full cash value by a local board of equalization, an assessment appeals board, or by a court of law resulting from such filing shall be conclusively presumed to be the base year value beginning with the lien date of the assessment year in which the appeal is filed.; or

(3) At any time after the time period specified in (1) or (2) if the applicant claims that an erroneous change in ownership determination occurred.

(d) Any base year value determined pursuant to section 51.5 of the Revenue and Taxation Code shall be conclusively presumed to be the base year value unless an application is filed during the regular equalization period in the year in which the error was corrected or during the regular equalization period in any of the three succeeding years. Once an application is filed, the base year value determined pursuant to that application shall be conclusively presumed to be the base year value for that assessment event.

(e) An application for equalization made pursuant to Ssections 620 1603 or 1605 of the Revenue and Taxation Code, when determined, shall be conclusively presumed to be the base year value for that assessment event.

NOTE – Authority: Government Code Section 15606(c)

Reference: Sections 80, 81, 110.1, 1603, 1605, Revenue and Taxation Code.

### **Rule 307. NOTICE OF HEARING.**

(a) After the filing of an application for reduction of an assessment, the clerk shall set the matter for hearing and notify the applicant or ~~his~~the applicant's agent in writing by personal delivery or by depositing the notice in the United States mail directed to the address given in the application. If requested by the assessor or the applicant, the clerk of the board may electronically transmit the notice to the requesting party. The notice shall designate the time and place of the hearing. It shall also include a statement that the board is required to find the ~~taxable~~ full value of the property from the evidence presented at the hearing and that the board can raise, under certain circumstances, as well as lower or confirm the assessment being appealed. The notice shall include a statement that an application for a reduction in the assessment of a portion of an improved real property (e.g., land only or improvements only) or a portion of installations which are partly real property and partly personal property (e.g., only the improvement portion or only the personal property portion of machinery and equipment) may result in a reappraisal of all property of the applicant at the site which may result in an increase in the unprotested assessment of the other portion or portions of the property, which increase will offset, in whole or in part, any reduction in the protested assessment.

(b) The notice shall be given no less than forty-five days prior to the hearing unless:

(1) the clerk has received a request for information pursuant to section 305.1, in which event the notice shall be given no less than twenty days prior to the hearing, or,

~~—(2) the clerk has received a writing from the applicant which states that the applicant will not make a request for information, in which event the notice shall be given no less than five days prior to the hearing, or,~~

~~—(3) a shorter notice period has been stipulated to by the assessor and the applicant or his~~the applicant's agent pursuant to section 1605.6 of the Revenue and Taxation Code.

(c) The clerk shall notify the assessor ~~and the county legal advisor~~ of the time and place of the hearing.

(d) When proposing to raise an assessment on its own motion without an application for reduction pending before it, the board shall give notice of the hearing in the manner provided herein below not less than 20 days prior to the hearing unless notice is waived by the assessee or ~~his~~the assessee's agent in writing in advance of the hearing or orally at the time of the hearing or a shorter notice period is stipulated to by the assessor and assessee or ~~his~~the assessee's agent. The notice shall be given to the assessee as ~~revealed by~~ shown on the latest assessment roll by depositing the notice in the United States mail directed to the assessee at the latest address of the assessee available to the assessor on file in the records in the assessor's office. It shall contain:

(1) A statement that a hearing will be held before the local board to determine whether or not the assessment shall be raised;

(2) The time and place of the hearing;

(3) The ~~A~~assessor's parcel number or numbers of the property as shown on the local roll;

(4) A statement that the board is required to find the ~~taxable~~ full value of the property from the evidence presented at the hearing;

(5) The amount by which it is proposed to raise the assessment.

NOTE – Authority: Government Code Section 15606(c)



Reference: Sections 50, 51, 1601, 1603, 1605.6, 1606, 1610.8, 1620, Revenue and Taxation Code.

### **Rule 308. REQUEST FOR FINDINGS.**

~~(a) If an applicant or the assessor desires written findings of fact, the request must be in writing and submitted to the clerk before commencement of the hearing. The requesting party may abandon the request and waive findings at the conclusion of the hearing. If the requesting party abandons the request at this time, the other party may orally or in writing renew the request at the conclusion of the hearing and accompany the request with payment of the required fee or deposit. The county may impose a reasonable fee, as determined by the board of supervisors, to cover the expense of preparing the findings and conclusions and may require a deposit to be paid prior to the end of the hearing. If, at the conclusion of the hearing, a party requesting written findings has failed to pay the required fee or deposit, the board need not prepare written findings. The board may deny a request made after the conclusion of the hearing that seeks to waive written findings.~~

(b) The written findings of fact shall fairly disclose the board's findings on all material points raised in the application and at the hearing. The findings shall also include a statement of the methods of valuation used in determining the full cash value of the property. The county shall provide findings within 45 days after the final determination of the board is entered into the record pursuant to regulation 325 of this subchapter, and shall accompany them with a notice that a request for a transcript of the hearing must be made within 60 days after the final determination. (See section 312 for other matters with regard to a transcript.)

(c) If the county board fails to make findings upon request, or if findings made are found by a reviewing court to be so deficient that a remand to the county board is ordered to secure reasonable compliance with the elements of findings required by section 1611.5 of the Revenue and Taxation Code, the action of the county board shall be deemed to be arbitrary and capricious within the meaning of section 800 of the Government Code, so as to support an allowance of reasonable attorney's fees against the county for the services necessary to obtain proper findings. The dollar limitation set forth in section 800 of the Government Code shall not apply to an allowance of attorney's fees pursuant to this section.

NOTE – Authority: Government Code Section 15606(c)

Reference: Section 1603, 1611.5, 1611.6, Revenue and Taxation Code.

### **Rule 308.5. DISQUALIFICATION OF A BOARD MEMBER OR HEARING OFFICER.**

(a) In those counties having assessment appeals boards or hearing officers, the party affected or ~~his~~ the party's agent, or the assessor, may file with the clerk a written statement objecting to the hearing of a matter before a member of the board or a hearing officer. The statement shall set forth the facts constituting the ground of the disqualification of the member or hearing officer and shall be signed by the party affected or ~~his~~ the party's agent, or by the assessor, and shall be filed with the clerk at the earliest practicable opportunity after discovery of the facts constituting the ground of the member's or hearing officer's disqualification, and in any event before the commencement of the hearing of any issue of fact in the proceeding before such member or hearing officer. Copies of the statement shall be served by the presenting party on each party to the proceeding and on the board member or hearing officer alleged to be disqualified. Within 10 days after filing of the statement or 10 days after service of it on him or her, whichever is later, the board member or hearing officer may file with the clerk a written answer:

~~—(1) Consenting to the proceeding being heard by another member or hearing officer, in which event the clerk shall appoint a replacement member or hearing officer, or~~

~~—(2) Denying his or her disqualification, which answer may admit or deny any or all of the facts alleged in the statement and set forth any additional facts relevant to his or her disqualifications.~~

~~The clerk shall forthwith transmit a copy of such answer to each party.~~

~~Every statement and answer shall be verified by oath in the manner prescribed by section 446 of the Code of Civil Procedure.~~

~~(b) No member shall hear or pass on the question of his own disqualification. Another member of the board shall hear and pass on the question and shall be selected as follows:~~

~~—(1) All the parties who have appeared may agree on the member who shall hear and pass on the question provided agreement is reached within five days after expiration of the time allowed in subsection (a) for the challenged member to answer, or,~~

~~(2) In the event an agreement is not reached within the time provided in subsection (b)(1), the clerk shall immediately notify the board of supervisors of that fact, and on receipt of notice the board of supervisors shall forthwith assign the member who shall hear and pass on the question.~~

(b) The question of the member's or hearing officer's disqualification shall be heard and determined by a board member, other than the member subject to the disqualification challenge, agreed upon by the parties who have appeared in the proceeding, or, in the event of their failing to agree, by a member assigned to act by the clerk. Within five days after the expiration of the time allowed by this regulation for the member to answer, the clerk shall assign a member to hear and determine the matter of the disqualification.

~~Once the member has been selected pursuant to subsection (b)(1) or (2), that member shall determine the qualification of the challenged member or hearing officer.~~

(c) In a county whose board of supervisors has adopted a resolution implementing the provisions of sections 1640.1 and 1641.1 of the Revenue and Taxation Code, the board may elect to schedule the application before the board in lieu of following the procedures prescribed above.

Reference: Section 1624.4, 1641.2, Revenue and Taxation Code.

**Rule 308.6. APPLICATION FOR EQUALIZATION BY MEMBER, OR ALTERNATE MEMBER, OR HEARING OFFICER.**

~~(a) An application for equalization filed pursuant to sections 1603 or 1605 of the Revenue and Taxation Code by a member or alternate member of an assessment appeals board or an appointed hearing officer shall be heard before an assessment appeals board panel consisting of three special alternate assessment appeals board members appointed by order of the presiding judge of the superior court in the county in which the application is filed.~~

(b) A special alternate assessment appeals board member may hear only the application or applications for equalization set forth in the superior court order appointing such member.

~~(c) Any person shall be eligible for appointment as a special alternate assessment appeals board member who is a resident of the county in which the application is filed and who is a person the presiding judge of the superior court has reason to believe is possessed of competent knowledge of property appraisal and taxation.~~

~~(d) Sections 1624.1 and 1624.2 of the Revenue and Taxation Code shall be applicable to the appointment of a special assessment appeals board member.~~

NOTE – Authority: Government Code Section 15606(c)

Reference: Section 1622.6, Revenue and Taxation Code.

**Rule 310. SELECTION OF BOARD ~~CHAIRMAN~~CHAIR.**

The board shall select one of its members to act as ~~chairman~~chair and preside over all hearings. This function may be rotated among board members. The ~~chairman~~chair shall exercise such control over the hearings as is reasonable and necessary. He or she shall make all rulings regarding procedural matters and regarding the admission or exclusion of evidence.

NOTE – Authority: Government Code Section 15606(c)

~~—Reference: Section 1609, Revenue and Taxation Code.~~

### **Rule 311. QUORUM AND VOTE REQUIRED.**

(a) No hearing before the board shall be held unless a quorum ~~consisting of a majority of the board~~ is present. Except as otherwise provided in ~~Section~~ regulation 310 of this subchapter, no decision, determination, or order shall be made by the board by less than a majority vote of all the members of the board who have been in attendance throughout the hearing.

(b) ~~If either party so demands, A~~ a hearing must be held before the full board ~~or, for assessment appeals boards appointed pursuant to Revenue and Taxation Code section 1622.1, a full three member panel~~ ~~if either party so demands.~~ In the event that only a quorum is present and the applicant demands a hearing before the full board, or full three member panel designated pursuant to Revenue and Taxation Code section 1622.1, the board may request that the applicant extend the two-year period provided in section 1604 of the Revenue and Taxation Code if the demand precludes the matter from being heard and decided before the expiration of the two-year period. If the applicant does not extend the two-year period as requested, the board may deny the applicant's demand for a hearing before a full board or a full three member panel.

(c) If a hearing takes place before a board consisting of an even number of members and they are unable to reach a majority decision, the application shall be reheard before the full board. In any case wherein the hearing takes place before less than the full board, the parties may stipulate that the absent member or members may read or otherwise become familiar ~~familiarize himself or themselves~~ with the record and participate in the vote on the decision.

NOTE – Authority: Government Code Section 15606(c)

Reference: Sections 1601, 1620, 1622.1, 1622.5, 1622.6, Revenue and Taxation Code.

### **Rule 312. HEARINGS RECORDED.**

(a) All hearings of the board shall be recorded or reported, or videotaped subject to the conditions set forth in Code of Civil Procedures section 2025, subsection (1)(2).

(b) Any person may purchase a transcript of that portion of ~~the~~ a hearings that is open to the public upon payment of a reasonable fee, provided the request to purchase has been made within 60 days after the final determination of the board.

(c) In a county which does not regularly ~~employ~~ provide a stenographic reporter, the applicant, at ~~his~~ the applicant's own expense, may have the hearing reported by a stenographer.

(d) In a county which does provide a stenographic reporter, ~~If~~ if the applicant desires the clerk to arrange for a ~~stenographic reporter~~ stenographer, ~~he~~ the applicant must ask the clerk to do so make the request in writing at least ~~two~~ 10 days before the hearing.

(e) If a stenographic reporter is present, the county may designate the reporter's transcript as the official record upon being filed with the board.

NOTE – Authority: Government Code Section 15606(c)

Reference: Section 1611, Revenue and Taxation Code.

### **Rule 316. EXAMINATION OF APPLICANT BY BOARD.**

~~(a) Except as hereinafter provided, no reduction of an assessment or change in ownership or new construction determination shall be made unless the board examines, on oath, the applicant or his the applicant's agent touching concerning the value of the property and/or the facts upon which the change in ownership or new construction determination is based, and the applicant or the applicant's agent attends and answers all questions pertinent to the inquiry.~~

(a)(b) In the event there is filed with the board a written stipulation, signed by the assessor and county legal advisor on behalf of the county and by the person affected or the authorized agent making the application, as to the ~~taxable~~ full value and assessed value of the property and/or a determination regarding a change in ownership or new construction, which stipulation sets forth the facts upon which the ~~reduction in~~ agreed upon value is premised, the board may, at a public hearing,

—(1) ~~accept the stipulation, waive the appearance of the person affected or the agent and change the assessed value in accordance with Ssection 1610.8 of the Revenue and Taxation Code, or,~~

(2) reject the stipulation or set or reset the application for reduction for hearing.

(b)(c) The board may, in its discretion, waive the examination of the applicant or ~~his~~ the applicant's agent if the board and the assessor are satisfied that the issues raised by the application and the facts pertaining thereto have been fully considered by the board in previous years or fully presented in the application, and if the applicant or ~~his~~ the applicant's agent requests such waiver in ~~his~~ the application. The board shall consult with the assessor and shall act promptly on any request for waiver and give written notice of its decision ~~within ten days of the filing of the application~~ no less than 30 days before commencement of the hearing on the application. If the board waives the examination of the applicant or ~~his~~ the applicant's agent, it shall decide the case on the merits of the application and on the basis of any evidence properly produced at the hearing by the assessor.

NOTE – Authority: Government Code Section 15606(c)

Reference: Section 1605.5, 1607, 1608, 1620 et seq., Revenue and Taxation Code.



**Rule 318. ~~PROPERTY IN COMMON OWNERSHIP.~~**

~~If the property is held in joint or common ownership or in co-ownership, the presence of the applicant or any one of the owners shall constitute a sufficient appearance.~~

NOTE – Authority: Government Code Section 15606(c)

Reference: Section 1601 et seq., Revenue and Taxation Code.

**~~Rule 319. APPEARANCE BY CORPORATION.~~**

Where the applicant is a corporation, the corporation shall make an appearance by the presence of any duly authorized officer or employee.

NOTE – Authority: Government Code Section 15606(c)

Reference: Section 1601 et seq., Revenue and Taxation Code.

**~~Rule 320. APPEARANCE BY MEMBERS OF FAMILY.~~**

~~A husband may appear for his wife, or a wife for her husband, and sons or daughters for parents or vice versa.~~

NOTE – Authority: Government Code Section 15606(c)

Reference: Section 1601 et seq., Revenue and Taxation Code.

## **Rule 322. SUBPOENAS.**

(a) At the request of the applicant or the assessor in advance of the hearing or at the time of the hearing, the board or the clerk on authorization from the board shall may issue subpoenas for the attendance of witnesses at the hearing. The board may issue a subpoena on its own motion. A subpoena may be served on any resident of the State of California or any person or business entity found within the state. All subpoenas shall be obtained from the board.

(b) If a subpoena is issued at the request of the applicant, he the applicant is responsible for serving it and for the payment of witness fees and mileage.

(c) An application for a subpoena for the production of books, records, maps, and documents shall be supported by an affidavit such as is prescribed by section 1985 of the Code of Civil Procedure.

(d) In the event a State Board of Equalization employee is subpoenaed pursuant to section 1609.5 of the Revenue and Taxation Code at the request of the applicant and the county board grants a reduction in the assessment, the county board may reimburse the applicant in whole or in part for the actual witness fees paid pursuant to section 1609.5.

(e) If a party desires the board to issue a subpoena, the party shall make the written request sufficiently in advance of the scheduled hearing date so that the subpoenaed party has an adequate opportunity to fully comply with the subpoena prior to the commencement of the hearing. Upon such request, the board may, whenever possible, issue subpoenas pursuant to sections 1609.4 and 1609.5 of the Revenue and Taxation Code. Subpoenas shall be restricted to compelling the appearance of a person or the production of things at the hearing and shall not be utilized for purposes of prehearing discovery. A subpoena issued near in time to or after commencement of the hearing should be as limited as possible, and a continuance of the hearing may be granted, if requested, for a reasonable period of time.

(f) No subpoena to take a deposition shall be issued nor shall depositions be considered for any purpose by the board.

NOTE – Authority: Government Code Section 15606(c)

Reference: Sections 1609, 1609.4, 1609.5, Revenue and Taxation Code.

### **Rule 323. POSTPONEMENTS AND CONTINUANCES.**

~~The board may continue a hearing to a later date. If the hearing is continued, the chairman or the clerk shall inform the applicant or his agent and the assessor of the time and place of such further hearing and no further notice thereof need be given.~~

~~(a) The applicant and/or the assessor shall be allowed one postponement as a matter of right, the request for which must be made not later than 21 days before the hearing is scheduled to commence. If the applicant requests a postponement as a matter of right within 120 days of the expiration of the two-year limitation period provided in section 1604 of the Revenue and Taxation Code, the postponement shall be contingent upon the applicant's written agreement to extend and toll indefinitely the two-year period subject to termination of the agreement by 120 days written notice by the applicant. The assessor is not entitled to a postponement as a matter of right if the request is made within 120 days of the expiration of the two-year period, but the board, in its discretion, may grant such a request. Any subsequent requests for a postponement must be made in writing, and good cause must be shown for the proposed postponement. A stipulation by an applicant and the assessor shall be deemed to constitute good cause, but shall result in extending and tolling indefinitely the two-year limitation period subject to termination of the agreement by 120 days written notice by the applicant. Any information exchange dates remain in effect based on the originally scheduled hearing date notwithstanding the hearing postponement, except as provided in regulation 305.1(d) of this subchapter.~~

~~(b) A board of supervisors may delegate decisions concerning postponement to the clerk in accordance with locally adopted rules. Requests for postponement shall be considered as far in advance of the hearing date as is practicable.~~

~~(c) At the hearing, the board or a hearing officer may continue a hearing to a later date. If the applicant requests a continuance within 90 days of the expiration of the two-year period specified in section 1604 of the Revenue and Taxation Code, the board may require a written extension signed by the applicant extending and tolling the two-year period indefinitely subject to termination of the agreement by 120 days written notice by the applicant. The clerk shall inform the applicant or the applicant's agent and the assessor in writing of the time and place of the continued hearing not less than 10 days prior to the new hearing date, unless the parties agree in writing or on the record to waive written notice.~~

NOTE – Authority: Government Code Section 15606(c)

Reference: Section 15606 subdivision (c), Government Code.

Section 1609 1605.6, 1606, Revenue and Taxation Code.

## **Rule 324. DECISION.**

**(a) DETERMINATION OF TAXABLE FULL VALUE, CLASSIFICATION, CHANGE IN OWNERSHIP, OR OTHER ISSUES.** Acting upon ~~the proper~~ evidence ~~properly~~ before it, the board shall determine the ~~taxable full~~ value of the property, including ~~both real land, improvements,~~ and personal property, ~~which that~~ is the subject of the hearing. The determination of the ~~taxable full~~ value shall be supported by a preponderance of the evidence presented during the hearing. The board shall consider evidence of value derived by the use of any of the valuation methods described in ~~section regulation~~ 3 of ~~this chapter subchapter~~ 1 of this chapter. It shall determine whether the method(s) used was (were) properly applied, considering the type of property assessed, ~~and any~~ governmentally imposed land use restrictions, ~~and any recorded conservation easements as described in Civil Code section 815.1 et seq.,~~ by examining the factual data, the presumptions, and the estimates relied upon. The board shall also determine the classification, amount, and description of the property that is the subject of the hearing, the existence of a change in ownership or new construction, or any other issue that is properly before the board, or that is necessary to determine the full value of the property. The board shall provide to the clerk such details as are necessary for the implementation of the board's decision.

**(b) JURISDICTION.** The board's authority to determine the ~~taxable full~~ value of property ~~or other issues,~~ while limited by the laws of this state and the laws of the United States and usually exercised in response to an application for equalization, is not predicated on the filing of an application nor limited by the applicant's request for relief. When an application for review includes only a portion of an appraisal unit, whether real property, personal property, or both, the board may nevertheless determine the ~~taxable full~~ value, classification, or other facts relating to ~~of other~~ portions that have undergone a change in ownership, new construction or a ~~decrease change~~ in value. Additionally, the board shall, ~~on its own motion or at the assessors' request,~~ determine the ~~market full~~ value of the entire appraisal unit whenever that is necessary to the determination of the ~~market full~~ value of any portion thereof.

The board is not required to choose between the opinions of value promoted by the parties to the appeal, but shall make its own determination of value based upon the evidence properly admitted at the hearing.

An appraisal unit of property is a collection of assets that functions together, and that persons in the marketplace commonly buy and sell as a single unit or that is normally valued in the marketplace separately from other property, or that ~~are~~ is specifically designated as such by law.

**(c) VALUATION PRINCIPLES.** The board, the applicant, and appraisal witnesses shall be bound by the same principles of valuation that are legally applicable to the assessor.

**(d) COMPARABLE SALES.** When valuing a property by a comparison with sales of other properties, the board may consider those sales ~~which that,~~ in its judgment, involve properties similar in size, quality, age, condition, utility, amenities, site location, legally permitted use, or other physical attributes to the property being valued. When valuing property for purposes of either the regular roll or the supplemental roll, the board shall not consider a sale if it occurred more than 90 days after the date for which value is being estimated. The provisions for exclusion of any sale occurring more than 90 days after the valuation date are restricted to use for the comparable sales method and do not apply to the sale of the subject property or to the use of the income method and capitalization of income earned more than 90 days after the valuation date.

The board shall presume that zoning or other legal restrictions, of the types described in Revenue and Taxation Code section 402.1, on the use of either the property sold or the property being

valued will not be removed or substantially modified in the predictable future unless sufficient grounds as set forth in that section are presented to the board to overcome that presumption.

**(e) FINDINGS OF FACT.** When written findings of fact are made, they shall fairly disclose the board's findings on all material points raised in the application and at the hearing. The findings shall also include a statement of the method or methods of valuation used in determining the full cash value of the property or its components, ~~and shall be made timely after the hearing.~~

NOTE – Authority: Government Code Section 15606(c)

Reference: Article XIII A, California Constitution. Section 15606 Government Code.

~~Sections 402.1, 402.5, 1609, 1610.8, 1611.5, Revenue and Taxation Code.~~

### **Rule 325. NOTICE AND CLARIFICATION OF DECISION.**

(a) A board may announce its decision to the applicant and the assessor at the conclusion of the hearing, or it may take the matter under submission. The decision becomes final when:

(1) The vote is entered into the record at the conclusion of the hearing provided no findings of fact are requested by either party, and all parties are present at the hearing or the hearing is subject to stipulation by both parties. The county may provide a written notice of the decision.

(2) A written notice of the decision is issued provided no findings of fact are requested by either party, and the decision is taken under submission by the board at the conclusion of the hearing. The county shall issue a written notice of the decision no later than 120 days after the conclusion of the hearing. ~~If the matter is taken under submission, the~~ The clerk shall notify the applicant in writing of the decision of the board by United States mail addressed to the applicant or to ~~his~~ the applicant's agent at the address given in the application.

(3) A written notice of the decision is issued or the findings of fact are issued, whichever is earlier, provided findings of fact are requested. The county shall issue a written notice of the decision no later than 120 days after the conclusion of the hearing. If so requested by an applicant or an applicant's agent, the determination shall become final upon issuance of the findings of fact which the county shall issue no later than 180 days after the conclusion of the hearing. Such a request must be made by the applicant or the applicant's agent prior to or at the conclusion of the hearing. If the conclusion of the hearing is within 180 days of the expiration of the two-year period specified in section 1604 of the Revenue and Taxation Code, the applicant shall agree in writing to extend the two-year period. The extension shall be for a period equal to 180 days from the date of the conclusion of the hearing.

~~(b) The board may request any party to submit proposed written findings of fact and shall provide the other party the opportunity to review and comment on the proposed finding submitted. If both parties prepare proposed findings of fact, no opportunity to review and comment need be provided.~~

(c) When findings of fact have been prepared, either party or the clerk may submit a written request for clarification about the details of the decision, but such clarification shall not alter the final determination of the board.

NOTE – Authority: Government Code Section 15606(c)

Reference: Section 1601 et seq., Revenue and Taxation Code.



### **Rule 326. RECONSIDERATION AND REHEARING.**

(a) The decision of the board upon an application is final. The board shall not reconsider or rehear an application; or modify a decision unless:

(1) The decision reflects a ministerial clerical error; or

(2) The decision was entered as the result of the applicant's failure to appear for the hearing and within the period established pursuant to regulation 313 of this subchapter, the applicant furnishes evidence establishing, to the satisfaction of the board, excusable good cause for the failure to appear.

NOTE – Authority: Government Code Section 15606(c)

Reference: Section 1601 et seq., Revenue and Taxation Code.